

IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI
CRIMINAL MISCELLANEOUS APPLICATION NO.99 OF 2002

Major(Retd.) Babu Thomas,
major of age,
resident of 5, Fazalbash Apts,
Desterro Waddo,
Vasco-da-Gama, Goa.

... Applicant.

versus

STATE,
represented through the
Deputy Superintendent of Police,
CID/CB,
Panaji, Goa.

... Respondent.

Mr. A. V. Nigalye, Advocate for the Applicant.

Mr. A. P. Lawande, Public Prosecutor for the State.

CORAM: P. V. HARDAS, J.

DATED: 19TH SEPTEMBER. 2002.

ORAL JUDGMENT

The present application has been filed under Section 482 of the Code of Criminal Procedure, 1973. At the out-set, Mr. A. V. Nigalye, the learned Counsel appearing for the Applicant/Accused states that a revision is maintainable. In view of this, this application is heard, decided and treated as Criminal Revision Application under Section 397 of the Code of Criminal Procedure, 1973.

2. The Applicant was employed by the Goa Shipyard Limited, a Government of India undertaking as a Joint

Manager(Security) and was officiating as a Manager(Personnel & Administration) on 14th September, 1994, when he is alleged to have committed an offence punishable under Sections 7 and 13 of the Prevention of Corruption Act, 1988. A charge-sheet against the present Applicant was filed on 23rd May, 1995, for an offence punishable under Section 7 r/w Section 13 of the Prevention of Corruption Act, 1988 and Sections 161 and 165 of the Indian Penal Code. In view of the points which are urged before me in the present revision, it is not necessary to advert to the facts of the case.

3. The prosecution filed a Sanction Order dated 2nd January, 1995, issued by the Company Secretary of the Goa Shipyard Limited. The said Sanction Order states in paragraph 1 that the Chairman and the Managing Director of the Company is the Appointing Authority of the present Applicant/Accused. In paragraph 2 of the said Sanction Order, it is stated that under the Goa Shipyard Officers' Conduct, Discipline and Appeal Rules, 1979, the services of the Applicant/Accused could be terminated after obtaining the approval of the Board of the Directors/Company. In paragraph 3 of the said Sanction Order, it is stated "the sanction required under Section 19 of the Prevention of Corruption Act, 1988 is hereby granted". This sanction was obviously granted by the Company Secretary. A perusal of this document would

clearly show that the Authority competent to remove the Applicant/Accused from the post he was holding was the Board of Directors. This Sanction Order does not at all refer to the fact that the person issuing the said Sanction Order i.e. the Company Secretary, was authorised by the Board of Directors to convey his sanction which is granted nor does the said Sanction Order refer about any sanction having been granted by the Board of Directors.

4. Another Sanction Order dated 7th September, 1997, came to be issued by the Chairman and the Managing Director of Goa Shipyard Limited. In paragraph 2, the Sanctioning Authority has referred to the various documents submitted along with the charge-sheet. In paragraph 3, it is stated "therefore in the exercise of powers vested we are satisfied that it is a fit case to accord sanction for prosecuting him. Therefore, on behalf of the Board of Directors sanction is hereby accorded to prosecute Major Babu Thomas under Prevention of Corruption Act, 1988, who was an ex-employee of this Company and now dismissed from service w.e.f. 21st January, 1997". Paragraph 4 of the said Sanction Order states that the sanction is accorded with retrospective effect from 14th September, 1994.

5. At the stage of framing of the charge against the Applicant/Accused, the Applicant/Accused raised a plea

of defective sanction. The learned Special Judge, South Goa, Margao, by his Order dated 10th June, 2002, rejected the plea of the Applicant/Accused of the charge.

6. As per the request of the Counsel for the parties, the Record and Proceedings have been called from the learned Trial Court. From a perusal of the Record and Proceedings of the learned Trial Court, it is seen that the charge-sheet came to be filed on 23rd May, 1995 and it was ordered to be registered. It was then ordered to be placed for Orders before the Court and accordingly, on 29th May, 1995, the learned Special Judge, South Goa, Margao, ordered the issuance of summons to the Applicant/Accused for appearance. The Order of Sanction dated 2nd January, 1995 formed a part of the charge-sheet which had been submitted before the learned Sessions Judge. Thus, when the learned Sessions Judge took cognizance of the offence on 29th May, 1995, the Order of Sanction dated 2nd January, 1995 was partly recorded.

7. Mr. A. V. Nigalye, the learned Counsel appearing for the Applicant/Accused has urged before me that the Sanction Order dated 2nd January, 1995 on the face of it is an invalid sanction which is granted. The cognizance of the offence taken by the Court in the face of an invalid sanction is bad in law. He has further urged that according to the rules of Goa Shipyard

Officers' Conduct, Discipline and Appeal Rules, 1979, the Authority competent to remove the Applicant/Accused is the Board of Directors. The rules themselves specify that for the purposes of these rules "Board" means a Committee of Directors appointed by the Board of Directors. Therefore, it is urged before me that the second sanction which is dated 7th September, 1997, is not issued by the Board of Directors nor does the Sanction Order refer to the fact that sanction to prosecute has been granted by the Board and the Chairman and the Managing Director was authorised to convey the same. It is urged before me that on plain reading of the second sanction dated 7th September, 1997, no inference can be drawn that the said sanction has been issued by the Competent Authority and in case of an invalid sanction, it cannot lie in the mouth of the prosecution that the defect could be cured by affording an opportunity of leading evidence.

8. An invalid sanction according to the learned Counsel appearing for the Applicant affects the very jurisdiction of the Court to take cognizance of the offence and take further proceedings in the matter. In support of its contention, the learned Counsel appearing for the Applicant/Accused has relied on Judgments in the matter of **Mohd Iqbal Ahmed v. State of Andhra Pradesh** reported in AIR 1979 SC 677, **State of Rajasthan v. A. K. Datta** reported in AIR 1981 SC 20, **Parmanand Dass v. State**

of Andhra Pradesh reported in AIR 1978 SC 1745 and **Rambhai Nathabhai Gadhvi and others v. State of Gujarat** reported in 1997(5) SCALE 388.

9. Mr. A. P. Lawande, the learned Public Prosecutor appearing on behalf of the State has urged that assuming that the sanction was invalid when the Court took cognizance, since the Applicant/Accused was dismissed from employment when the learned Special Judge, South Goa, Margao framed the charge and as the Applicant/Accused ceased to be a public servant, there was no necessity of previous prior sanction in the year 2002 when the learned Special Judge, South Goa, Margao framed the charge. It is also urged by the learned Counsel appearing for the State that in case, this Court, finds that the sanction is invalid, this Court would not be empowered to acquit the Applicant/Accused but at the most, the proceedings would be relegated back to the stage of obtaining a valid sanction, if required, from the competent sanctioning authority. The learned Public Prosecutor appearing for the State has placed reliance on **Mansukhlal Vithaldas Chauhan v. State of Gujarat** reported in 1997 Cri.L.J. 4059 and **Jaysingh Wadhu Singh v. State of Maharashtra** reported in 2001 Cri.L.J. 456. The learned Public Prosecutor appearing for the State has also placed reliance on a Judgement of the Apex Court in **State of**

Kerala v. V. Padmanabhan Nair reported in AIR 1999 SC 2405.

10. In Mohd. Iqbal Ahmed v. State of Andhra Pradesh(supra), the Hon'ble Supreme Court has observed thus:-

"It is incumbent on the prosecution to prove that a valid sanction has been granted by the Sanctioning Authority after it was satisfied that a case for sanction has been made out constituting the offence. This should be done in two ways; either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction and (2) by adducing evidence aliunde to show the facts placed before the Sanctioning Authority and the satisfaction arrived at by it. Any case instituted without a proper sanction must fail because this being a manifest defect in the prosecution, the entire proceedings are rendered void ab initio. What the Court has to see is whether or not the Sanctioning Authority at the time of giving sanction was aware of the facts constituting the offence and applied its mind for the same; any subsequent fact which may come into existence after the grant of sanction is wholly irrelevant. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to Government servants against frivolous prosecutions and must therefore be strictly complied with before any prosecution can be launched against the public servant concerned. It will not be

correct to say that in view of the presumption which is to be drawn under S.4, even if no facts are mentioned in the Resolution of the Sanctioning Authority it must be presumed that the Sanctioning Authority was satisfied that the prosecution against the accused should be launched on the basis of the presumption that the accused had received a bribe."

11. In **Rambhai Nathabhai Gadhvi and others v. State of Gujarat** (supra), the Hon'ble Supreme Court has observed thus:-

"Taking cognizance is the act which the Designated Court has to perform and granting sanction is an act which the sanctioning authority has to perform. Latter is a condition precedent for the former. Sanction contemplated in the sub-section is the permission to prosecute a particular person for the offence or offences under TADA. We must bear in mind that sanction is not granted to the Designated Court to take cognizance of the offence, but it is granted to the prosecuting agency to approach the court concerned for enabling it to take cognizance of the offence and to proceed to trial against the persons arraigned in the report. Thus a valid sanction is sine qua non for enabling the prosecuting agency to approach the court in order to enable the court to take cognizance of the offence under TADA as disclosed in the report. The corollary is that, if there was no valid sanction the Designated Court gets no jurisdiction to try a case against any person mentioned in the report as the court is forbidden from taking cognizance of the offence without such sanction. If the Designated Court has taken cognizance of the offence without a valid sanction,

such action is without jurisdiction and any proceedings adopted thereunder will also be without jurisdiction."

12. Mr. A. P. Lawande, the learned Public Prosecutor appearing for the State has placed reliance on a decision of the Apex Court in **Mansukhlal Vithaldas Chauhan v. State of Gujarat** (supra), to urge before me that the Apex Court in paragraph 39 of the Judgment has held thus:-

"Normally when the sanction order is held to be bad, the case is remitted back to the authority for reconsideration of the matter and to pass a fresh order of sanction in accordance with law. But in the instant case, the incident is of 1983 and, therefore, after a lapse of fourteen years, it will not, in our opinion, be fair and just to direct that the proceedings may again be initiated from the stage of sanction so as to expose the appellant to another innings of litigation and keep him on trial for an indefinitely long period contrary to the mandate of Article 21 of the Constitution which, as part of right to life, philosophizes early end of criminal proceedings through a speedy trial."

Therefore, according to the learned Public Prosecutor appearing for the State in the event this Court finds the sanction to be invalid, the case deserves to be remitted back to the Authority for passing appropriately valid sanction order.

13. Mr. A. P. Lawande, the learned Public Prosecutor appearing for the State has also placed

reliance on a Division Bench Judgment of this Court in **Jaysingh Wadhu Singh v. State of Maharashtra**(supra) and particularly on the observations of the Court at paragraph 38 which reads thus:-

"It may be noted that purpose behind securing sanction to prosecute the public servant is that the public servant is not subjected to any vexatious or malicious prosecution. It would further be also noted that as per Section 190 of the Code of Criminal Procedure, the Court has to take cognizance of certain set of facts which constitutes offence. The charge-sheet is to be filed by the police but it is ultimately for the Court to frame the charge by finding out from the investigation papers as to what offences are made out therefrom. The evidence was already collected and the charge sheet was submitted. From the investigation papers therein, it was for the Special Court to find out as to whether material collected, inter alia, revealed commission of offence punishable under the Prevention of Corruption Act. In such set of circumstances, merely because the charge came to be filed earlier than the date of production of the sanction order before the Court, it cannot be said that the Court would not have jurisdiction to frame charge and hold the trial of the accused for the offences punishable under the Prevention of Corruption Act particularly when the sanction order was produced before framing of the charges. The Federal Court decision would not be of any avail to the petitioner in the instant case since the sanction order therein was

produced before the Magistrate when already the case was fixed for evidence i.e. when the prosecution had already been set in motion and various steps were taken."

On the basis of the above referred Authority, it is sought to be urged before me that when the learned Trial Court framed a charge against the present Applicant/Accused, he had ceased to be a public servant and, therefore, entertaining the present application would be an exercise in futility as the learned Special Judge, South Goa, Margao, would be still competent to proceed and try the Applicant/Accused in the absence of a valid sanction as he had ceased to be a public servant.

14. The facts in **Mansukhlal Vithaldas Chauhan v. State of Gujarat** (supra) are not similar to the facts of the present case. This was a case where the High Court by issuing a writ of mandamus had directed the Authority to grant sanction and on this background, the Apex Court observed that the sanction was mechanical. The Apex Court, therefore, in view of the fact that since fourteen years have lapsed since the date of the incident, thought it fit to acquit the Applicant/Accused instead of remitting back to the Authority for grant of sanction. The ratio of the Apex Court in my humble opinion is not applicable to the facts of the present case. In the present case, sanction has been granted by an Authority which was not competent to remove the Applicant/Accused.

15. It is an undisputed fact that when the learned Special Judge, South Goa, Margao, took cognizance of the offence, the sanction was included in the charge-sheet. The said sanction dated 2nd January, 1995, apart from the fact that it was issued by the Authority which was not by the rules competent to remove the Applicant/Accused does not disclose at all that the Authority granting sanction had applied its mind to the facts of the case. The Judgment of the learned Judges of the Division Bench of this Court in **Jaysingh Wadhal Singh v. State of Maharashtra** (supra) would have come to the aid of the prosecution had the prosecution been able to show that the second Order was a valid and legal Sanction Order. A perusal of the said Sanction Order does not disclose (I) that the Board of Directors was called upon to consider the grant of sanction. (II) that the Board of Directors on perusal of the material granted sanction. (III) that the Board of Directors had authorised the Chairman and Managing Director to accord sanction on their behalf. Merely because the Chairman and Managing Director in paragraph 3 says "we" it would not mean that the Board of Directors had considered the material available against the Applicant/Accused and had granted sanction to prosecute him. As per the rules, it is only the Board of Directors which is competent to remove the Applicant/Accused who was then holding the post of Joint Manager. The Chairman and the Managing Director was not

the Authority competent to remove him. In such circumstances, prima facie on plain reading of the sanction document, it is clear that the sanction has been issued by an Authority which is not competent in law to remove the Applicant/Accused and, therefore, the sanction issued by the Chairman and the Managing Director is, according to me, an invalid sanction. The lacunae pointed out above are not such kind as can be cured by leading any evidence of the prosecution. Had the Sanction Order referred to a decision of the Board of Directors then it was open for the prosecution to claim that during trial, the Minutes of the Board of Directors could have been proved to buttress what was stated in the Sanction Order. In the present case, the Sanction Order does not contain any reference whatsoever to any meeting of the Board of Directors much less to any decision taken by the Board of Directors. Therefore, according to me, this is not a case where the prosecution would be able to prove the validity of a Sanction Order by leading other evidence as by itself the sanction is invalid at the threshold as it is issued by the Authority not to remove the Applicant/Accused.

16. Section 19 of the Prevention of Corruption Act, 1988 mandates that no Court shall take cognizance of an offence without previous sanction. In the present case, the Court had taken cognizance of the offence on the basis of the first Sanction Order which was per se invalid and

at the time of framing of the charge the second Sanction Order was on record which according to me, is also an invalid sanction. Therefore, the decision referred to above by the learned Public Prosecutor appearing for the Applicant/Accused in **Jaysingh Wadhal Singh v. State of Maharashtra** (supra) cannot advance the prosecution case any further. It, therefore, emerges that when the learned Special Judge, South Goa, Margao, took cognizance of the offence, there was no valid sanction in the eye of law and even when the learned Special Judge, South Goa, Margao, took cognizance of the offence there was no charge of the sanction in the eye of law. The taking of the cognizance of the offence and further proceedings are, therefore, void and the prosecution cannot be allowed to be continued on the basis of an invalid sanction.

17. Mr. A. P. Lawande, the learned Public Prosecutor appearing for the State has also invited my attention to a Judgment of the learned Single Judge of this Court in Criminal Miscellaneous Application No. 103 of 2002, dated 26th July, 2002. The facts in the Judgment referred to above were that the Applicant/Accused had ceased to be a public servant employed by the Goa Shipyard Limited when the learned Special Judge, South Goa, Margao, took cognizance of the offence. The Applicant/Accused had been employed as a Chairman and Managing Director of Transformers and Electricals Ltd., Kerala. In that

background, therefore, the Order of the learned Trial Court repelling the contention of the Applicant/Accused that he could not be prosecuted without obtaining prior sanction had been upheld. The facts of the Judgment cited before me are, therefore, not applicable to the facts of the present case.

18. In the result, therefore, Criminal Miscellaneous Application No.99 of 2002 is allowed. The Order impugned is set aside. The prosecution in respect of the Applicant/Accused for an offence punishable under Section 7 r/w Section 13 of the Prevention of Corruption Act, 1988 and Sections 161 and 165 of the Indian Penal Code registered as Special Case No. 1 of 2002 is hereby quashed. The Applicant/Accused is discharged from the above proceedings.

19. Criminal Miscellaneous Application No. 99 of 2002 is, therefore, allowed on the aforesaid terms.

P. V. HARDAS, J.